IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1521 OF 2004

IN

PETITION NO. 270 OF 2004

Ignatius Simon D'souza .....Plffs.
vs.
Mr. Peter Jaicinto Pereira
and ors. .....Defnds.

S. Jain i/b. M.A. Thakar and co. for the petitioner in support.

S. Shah with T.N. Tripathi for respondent no.1 to show cause.

Ms. Kajal Shah i/b. J.A. Damani for respondent no.29.

CORAM: S.U. KAMDAR, J.

DATE : 11TH AUGUST, 2005.

P.C. :

1. The present motion has been taken out for an injunction restraining the respondent

from in any manner disturbing the use, occupation and possession of the petitioner inrespect of the suit property prescribed in Ex.A to the Affidavit in support and also relief is sought that inrespect of the suit property no third party rights should be created or parted with possession thereof. The present petition is filed by the petitioner claiming that there is a will of one Francis D'souza who has expired on 21.3.86 leaving behind his last will and testament dated 22.8.85.

2. It is the case of the applicant that under the said will the property which has been the subject matter of the present notice of motion come to the share of himself exclusively in exclusion of other persons. The present notice of motion has been resisted by the 31st Respondent who is claiming right, title and interest inrespect of the suit property. It is his case that the said property has been purchased by him under an MOU dated 16.6.2000. It is his further case that the said MOU has

been signed by the petitioner and the consideration for the purchase of the said property has been paid to one Englena D’souza who is admittedly the mother of the petitioner and she was paid as head of a branch comprising of herself and children including the petitioner herein. Learned counsel for the respondent no.31 has also produced before me the power of attorney and the declaration which have also been executed by the petitioner as well as on 26.6.2000 and the letter of atonement of 30.6.2000. The said documents are executed by the various family members of different branches of the deceased. Petitioner is one of the signatories. However the learned counsel for the petitioner denies the signature of the petitioner on the aforesaid documents. I have compared the signature if the petitioner with the admitted signatures which are on the record. of the petitioner and affidavit in support of the Notice of Motion. Admitted signatures are there on the petition. I have also compared his signature with the signature on vakalatnama

which in fact he has put today in my presence since there was no signature on vakalatnama. After comparing the signatures which are admitted signatures I am of the prima facie opinion that the signatures on the MOU, Power of Attorney and declaration are of the petitioner herein and his denial that the signature is not his cannot be accepted. Apart therefrom it is also an admitted position that the mother has received the money towards the consideration under the said MOU. It is also an admitted position that the document is also signed by the brother and sisters of the petitioner namely Alfred and Catherine apart from the thumb impression of the mother. In the light of the aforesaid position it is not possible to accept the aforesaid contention of the learned counsel for the petitioner denying his signature. in the said documents alongwith a signature also on each page of the said documents is not his signature. I am of the opinion that the petitioners case is not truthful and therefore I am not inclined to pass any interim orders in

the present case. In any event if the said document is executed by the petitioner then obviously third party rights are created in favour of respondent no.31 who have purchased the said property. Apart therefrom the most important factor which is required to be taken into consideration is that the will of the deceased is dated 22.8.1985 and admittedly he has expired on 21.3.86. The probate petition is filed in 2004 i.e. of the for more that around 18 years after the death of the testator. In the light of the aforesaid facts no case is made out for grant of any interim orders.

3. The issue whether the statement of the petitioner that he has not signed the documents is required to be considered in depth and the same will be done at the final hearing of the petition. I am further of the opinion that if the signature of the petitioner is existing on the said documents and if found that he has signed the same then he will be saddle with appropriate penalty for making a false statement

and that issue will be decided at the final hearing of the matter. Motion dismissed. No order as to costs.

sd/-

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